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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,739	12/05/2003	Eric G. Hull	427600700087	3999

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901 Lakeside Avenue
Cleveland, OH 44114-1190

EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/729,739	Applicant(s) HULL ET AL.	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,7-9,11,12,17-19 and 23-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-35 is/are allowed.
- 6) ☒ Claim(s) 1,7-9,11,12,17-19, 23-25, 30 and 32-35 is/are rejected.
- 7) ☐ Claim(s) 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

2. The indicated allowability of claims 30 and 32-35 is withdrawn in view of the newly discovered reference(s) to Allen et al. (US 6,988,747 B2) and Schamp (US 685,694). Rejections based on the newly cited reference(s) follow.

Double Patenting

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4. Claim 18 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 25. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Objections

5. Claims 1, 12, 19 and 30 are objected to because of the following informalities:

- Claim 1 recites the limitation "said cavity, said socket and said peripheral wall being configured to provide insertion of an electrical nonmetallic tube into and through said socket past said finger terminal ends into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" between lines 24 to 27. The specifications fail to provide support for this limitation. Therefore, for purpose of examination the limitation "into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" will not be taken into consideration.

- Claim 12 recites the limitation "said cavity, said socket and said peripheral wall being configured to provide insertion of an electrical nonmetallic tube into and through said socket past said finger terminal ends into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" between lines 21 to 24. The specifications fail to provide support for this limitation. Therefore, for purpose of examination the limitation "into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" will not be taken into consideration.

- Claim 19 recites the limitation "said cavity, said socket and said peripheral wall being configured to provide insertion of an electrical nonmetallic tube into and through said socket past said finger terminal ends into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" between lines 23 to 26. The specifications fail to provide support for this limitation. Therefore, for purpose of examination the limitation "into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" will not be taken into consideration.

- Claim 30 recites the limitation "said cavity, said body wall and said socket being configured to provide insertion of an electrical nonmetallic tube into and through said socket past said finger terminal ends into engagement with a support surface that overlies said bottom opening when said plane outer surface of said flange is positioned

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against the support surface for supporting the fitting thereon" between lines 19 and 22.

The specifications fail to provide support for this limitation. Therefore, for purpose of examination the limitation "into engagement with a support surface that covers said bottom opening when said plane outer surface of said attachment flange rests against the support surface" will not be taken into consideration.

Correction is required.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

States.

7. Claims 1, 7, 9, 11, 12, 17, 18, 25, 30 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen et al. (US 6,988,747 B2) in view of Schamp (US 6,856,694).

Allen discloses a fitting (16,30) comprises a molded plastic body (30) having an inverted generally cup-like configuration (Figs. 1-10 and 13). The body has a peripheral wall (36) and an end wall (outer wall opposite to 16) forming an internal cavity having a bottom opening and a generally cylindrical socket (44). The socket extends through the endwall into the cavity (Figs. 1-10 and 13). The socket has a socket wall (between end

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wall and 44) that is surrounded by the cavity and with the peripheral wall in outwardly-spaced relationship to the socket wall (Figs. 1-10 and 13). The socket has a longitudinal socket axis intersecting the bottom opening (Figs. 1-10 and 13). The socket wall has a generally cylindrical entrance portion extending over a portion of the axial length of the socket (Figs. 1-10 and 13). The socket wall has a plurality of circumferentially-spaced resilient fingers (44) extending from the generally cylindrical entrance portion over the remaining length of the socket wall (Figs. 1-10 and 13). The fingers terminal ends are spaced from the bottom opening (Figs. 1-10 and 13). The cavity, the socket and the peripheral wall are configured to provide insertion of an electrical nonmetallic tube into and through the socket past the finger terminal ends (Figs. 1-10 and 13). The body peripheral wall and endwall are continuous and free of openings therethrough around the socket and capable of precluding entry of poured concrete into the socket and the cavity through the body peripheral wall and the endwall (Figs. 1-10 and 13). Allen fails to disclose a flange extending outwardly from the peripheral wall around a bottom opening where the flange has a plane outer surface and having a plurality of fastener receiving holes therethrough spaced around the opening where the plane outer of the attachment flange being at one terminal end of the fitting and the end wall is at a generally opposite end of the fitting and the plane outer surface of the attachment flange is positionable against a plane support surface for attaching the fitting to the support surface with the bottom opening closed by the support surface. However, Schamp teaches a fitting (10,15). The fitting has a body (10,15) with a peripheral wall (10) and a flange (15) extending outwardly from the

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peripheral wall around a bottom opening (Figs. 1-3 and 5). The flange has a plane outer surface and having a plurality of fastener receiving holes (16) therethrough spaced around the opening (Figs. 1-3 and 5). The plane outer of the attachment flange is at one terminal end of the fitting and the end wall is at a generally opposite end of the fitting (Figs. 1-3 and 5). The plane outer surface of the attachment flange is positionable against a plane support surface (Figs. 1-3 and 5). The plate allows securing the body to a wall (Page 1 , Lines 39-50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have an attachment flange having a plurality of fastener receiving holes that extends outwardly from the body wall around the bottom opening with a plane outer surface that is at one terminal end of the fitting and the end wall is at generally opposite terminal end of the fitting so that the plane outer surface of the attachment flange is positioned against a plane support surface as taught by Schamp in the fitting disclosed by Allen so that the flange will be provided at an end of the peripheral wall opposite to the end wall to allow securement of the fitting and therefore of the coupling to a supporting wall. Doing so, teaches that the use of a plate to secure the body of a fitting to a wall is well known in the tube securing art.

Allen also discloses that:

- The bottom opening is circular and has a central axis (Figs. 1-10 and 13).

The peripheral wall has a generally frustoconical shape and the socket axis being generally coincidental with the central axis of the bottom opening (Figs. 1-10 and 13).

- The fingers are more than three in number and are separated by generally V-shaped spaces that increase in width from the generally cylindrical entrance portion to the finger terminal ends so that the fingers gradually decrease in circumferential width in a direction from the generally cylindrical entrance portion to the finger terminal ends (Figs. 1-10 and 13).

- The end wall is generally flat (Figs. 2 and 4-6).

Allen discloses that the finger are more than three in number and all the fingers have radially inwardly extending teeth thereon adjacent the finger terminal ends. Allen fails to disclose that only two generally opposed ones of the fingers have radially inwardly extending fingers thereon adjacent the finger terminal ends. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the only two generally opposed ones of the fingers have radially inwardly extending fingers thereon adjacent the finger terminal ends since a reduction on the amount of teeth will provide a reduction on the manufacturing costs since only two of the fingers need to have the teeth and less material is needed to make the fitting.

Regarding claim 12, claim 12 can be rejected by using a combination of the rejection of claims 1 and 7 that will provide the same limitations being recited by the claim.

Regarding claim 30, the same rejection of claim 1 serves to reject claim 30 since Allen discloses that the body (30) has a body wall (36) forming an internal cavity with a bottom opening (Figs. 1-10 and 13). The socket extends through the body wall into the cavity (Figs. 1-10 and 13). The body wall is continuous and free of openings

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therethrough around the socket including around the socket fingers and capable of precluding entry of poured concrete into the socket and the cavity through the body wall (Figs. 1-10 and 13). The cavity, the body wall and the socket are configured to provide insertion of an electrical nonmetallic tube into and through the socket past the finger terminal ends (Figs. 1-10 and 13).

The body wall includes a generally flat endwall through which the socket extends into the cavity (outer wall opposite to 16).

The socket has a continuous and uninterrupted entrance portion that is surrounded by the cavity with the body wall in outwardly-spaced surrounding relationship thereto (Figs. 1-10 and 13). The finger have finger inner surfaces that are inclined toward the socket axis in a direction away from the cylindrical entrance portion toward the finger terminal ends (Figs. 1-10 and 13). The finger inner surfaces are curved to lie on the surface of a cone (Figs. 2 and 4-6).

The body wall, the cavity and the socket are configured with the cavity surrounding the socket and with the body wall in outwardly-spaced surrounding relationship to the socket (Figs. 1-10 and 13).

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Schamp as applied to claims 1, above, and further in view of Hasty (US 4,864,782).

Allen and Schamp were combined above to reject claim 1. The combination of Allen and Schamp fails to disclose that the socket extends at an angle of 45 degrees with to the plane of the flange plane outer surface. However, Hasty discloses a fitting

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(2,4) comprising a body (4) having an inverted generally cup-like configuration and an attachment flange (2) (Figs. 1-3). The body has a peripheral wall, an end wall forming an internal cavity having a bottom opening and a generally cylindrical socket (Figs. 1-3). The attachment flange extends outwardly from the peripheral wall around the bottom opening (Figs. 1-3). The flange has a plane outer surface (Figs. 1-3). The plane outer surface of the attachment flange is at one terminal end of the fitting and the end wall is at a generally opposite terminal end of the fitting. The socket extends through the endwall into the cavity (Figs. 1-3). The socket has a socket wall that is surrounded by the cavity and with the peripheral wall in outwardly-spaced relationship to the socket wall (Figs. 1-3). The socket has a longitudinal socket axis intersecting the bottom opening (Figs. 1 and 2). The socket wall has a generally cylindrical entrance portion extending over a portion of the axial length of the socket (Figs. 1 and 2). The socket extends at an angle of 45 degrees with respect to the plane of the flange plane outer surface (Figs. 1 and 2). Hasty teaches that providing a socket that extends at an angle of 45 degrees with respect to the plane of the flange plane outer surface is well known in the tube fitting art so that the tube will project at a 45 degree angle from the flange plane outer surface. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the socket extending at an angle of 45 degrees with respect to the plane of the flange plane outer surface as taught by Hasty in the fitting disclosed by Allen and modified by Schamp. Doing so, allows the tube to project 45 degrees with respect to the plane of the plane outer surface in a manner well known in the art.

9. Claims 19, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen in view of Schamp and Hasty.

The socket of the fitting disclosed by Allen and modified by Schamp extends at an angle of 90 degrees with respect to the plane of the plan outer surface and Allen discloses that the bottom opening having a larger area than the area of the endwall (Figs. 1-10 and 13). The combination of Allen and Schamp fails to disclose that the socket extends at an angle less than 90 degrees with respect to the plane of the flange plane outer surface. However, Hasty discloses a fitting (2,4) comprising a body (4) having an inverted generally cup-like configuration and an attachment flange (2) (Figs. 1-3). The body has a peripheral wall, an end wall forming an internal cavity having a bottom opening and a generally cylindrical socket (Figs. 1-3). The attachment flange extends outwardly from the peripheral wall around the bottom opening (Figs. 1-3). The flange has a plane outer surface (Figs. 1-3). The plane outer surface of the attachment flange is at one terminal end of the fitting and the end wall is at a generally opposite terminal end of the fitting. The socket extends through the endwall into the cavity (Figs. 1-3). The socket has a socket wall that is surrounded by the cavity and with the peripheral wall in outwardly-spaced relationship to the socket wall (Figs. 1-3). The socket has a longitudinal socket axis intersecting the bottom opening (Figs. 1 and 2). The socket wall has a generally cylindrical entrance portion extending over a portion of the axial length of the socket (Figs. 1 and 2). The socket extends at an angle of 45 degrees with respect to the plane of the flange plane outer surface (Figs. 1 and 2). Hasty teaches that providing a socket that extends at an angle of less than 90 degrees with respect to the plane of the

flange plane outer surface is well known in the tube fitting art so that the tube will project at an angle less than 90 degrees from the flange plane outer surface. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the socket extending at an angle less than 90 degrees with respect to the plane of the flange plane outer surface as taught by Hasty in the fitting disclosed by Allen and modified by Schamp. Doing so, allows the tube to project less than 90 degrees with respect to the plane of the plane outer surface in a manner well known in the art.

Hasty teaches that the bottom opening is non-circular (Figs. 1 and 2).

Allowable Subject Matter

10. Claims 26-29 allowed.
11. Claim 31 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to claims 1, 7-9, 11, 12, 17-19, 23-25, 30 and 32-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gruber et al. (US 5,112,086), Shirogane et al. (US 5,356,181), Gerich (US 6,199,918) and Hardic et al. (US 2003/0155767) are cited to show state of the art with respect to fittings having similar limitations to those being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C. Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
April 12, 2007



ROBERT J. SANDY
PRIMARY EXAMINER